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OFFICE OF PETITIONS

In re Application of
Christopher M. Anderson
Application No. 10/721,928
Filed: November 24, 2003
Attorney Docket No. 091-0204

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ON PETITION

This is a decision in response to the petition, filed January 7, 2008, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to a non-final Office action mailed April 6, 2007. A Notice of Abandonment was mailed October 17, 2007. In response, on January 7, 2008, the present petition was filed, along with an amendment, 3-month extension of time and a Revocation and Power of Attorney.

The Revocation and Power of Attorney filed January 7, 2008, has not been accepted, as it is filed on behalf of the assignee and does not include an appropriate statement under 37 CFR 3.73(b). However, in accordance with 37 CFR 1.34(a), the signature of David R. Fairbairn appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. However, if Mr. Fairbairn desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. A courtesy copy of this decision is being mailed to petitioner. Nevertheless, all future correspondence regarding this application file will be directed solely to the address of record.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of \$1,540; and (3) an adequate statement of unintentional delay¹.

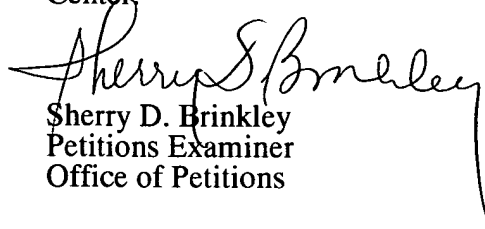
Extensions of time under 37 CFR 1.136 are available only if asked for "prior to or with the response." In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for response has expired. Therefore, no extension of time fees are due on a petition for revival.

¹ 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. While the statement is not made by an attorney of record, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and *Changes to Patent Practice and Procedure*; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

In view thereof, the \$1,050 extension of time fee submitted with the petition is unnecessary and will be refunded to petitioner's deposit account.

The application is being referred to Technology Center AU 1795 for consideration of the response filed January 7, 2008.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.



Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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